question cannot be accomplished by the application of a geometrical test such as that suggested in the principal case, but, again to quote the words of the English court, it "must depend upon the construction of the contract and the particular circumstances of the particular case." According to Holmes, C. J., in *Dedham Natl. Bank* v. *Everett Natl. Bank,* 177 Mass. 392, "the ground of recovery * * * under a mistake of fact is that the existence of the fact supposed was the conventional basis or tacit condition of the transaction." The Washington court will be compelled to recede from its position in the principal case unless it intends to extend relief to a vast number of cases of mistake which have not been generally recognized as warranting the interposition of equity.

EQUITY—INJUNCTION AGAINST USURPATION OF OFFICER'S DUTIES.—The charter of Oklahoma City vested the powers of city government in five commissioners. One provision of the charter placed the police department under the supervision of the mayor. Another provision authorized the commission by a vote of four to one to "transfer duties from one commissioner and from one department to another commissioner and another department." By such a vote the control of the police department was transferred from the mayor to the commissioner of accounting and finance. Upon a bill for an injunction, *held,* the charter could not be construed to empower the commissioners to make this transfer, and equity had jurisdiction to enjoin the assumption of authority over the police. *Walton* v. *Donnelly* (Okla., 1921), 201 Pac. 367.

The court drew attention to the fact that it was not called upon to determine the complainant's title to his office, and placed its decision upon the ground that there was no legal remedy, because information in the nature of *quo warranto* was confined to the determination of title to office, and could not be used to determine who should perform particular official duties. The scope of a *quo warranto* proceeding is generally regarded as so limited. HIGH, EXTRAORDINARY LEGAL REMEDIES, § 618. *Quo warranto* was held not to be the proper remedy to prevent city officers from levying and collecting taxes beyond the city limits. *People* v. *Whitcomb,* 55 Ill. 172. Injunction and not *quo warranto* was held to be the proper remedy to prevent the county tax collector from paying into the county treasury taxes levied upon city property. *Sanderson* v. *Texarkana,* 103 Ark. 529. In a recent case, however, a writ of prohibition was granted to prevent the circuit court from assuming jurisdiction to grant an injunction to restrain the circuit judges from classifying the deputies in county offices, under a statute authorizing this, the injunction being asked upon the ground that the statute was unconstitutional. The reasons given were (1) that equity has no jurisdiction to restrain political acts; (2) the legal remedy by proceeding in *quo warranto* was available, because the statute giving the remedy of *quo warranto* made it available to protect "franchises," and in its broad sense a franchise may include the right of a public officer to perform official duties as well as the rights of corporations. *State* v. *Dawson* (Mo., 1920), 224

S. W. 824. An injunction was refused on the same ground in *Cochran* v. *McCleary*, 22 Iowa 75. Equity will enjoin the ouster of an officer without a proper hearing at law, and, without trying the title to an office as between rival claimants, will protect its enjoyment. *Kerr* v. *Trego*, 47 Pa. 292; see 20 MICH. L. REV. 238. But it is clear that in the principal case the court decided upon the disputed right of the complainant to exercise certain duties claimed as appurtenant to his office, and the assumption of jurisdiction as to this political question can be justified, in view of equity's traditional attitude toward political questions, only upon the ground given that the legal remedy of *quo warranto* is not available for the purpose.

EQUITY—UNCONSCIONABLE CONTRACT CANCELED.—The plaintiff had a deposit in a trust company of $22,500, of which he had lost all recollection because of an illness which had resulted in a loss of memory. A company official who knew of the plaintiff's mental condition, and also, by reason of his connection with the company, of the deposit, concealed from the plaintiff his official connection and induced him to contract to pay nearly one-half of the sum as consideration for revealing its whereabouts. Later the plaintiff sued for cancellation of the contract. There was no claim of mental incapacity to contract. *Held*, because of the abnormal condition of the plaintiff's mind, and also because of the semi-confidential position which the defendant occupied with respect to the plaintiff, equity would give the desired relief. *Gierth* v. *Fidelity Trust Company* (N. J., 1921), 115 Atl. 397.

The case was well decided on either of the two bases suggested by the court. As to the effect of the plaintiff's mental condition, although there was no claim that he was mentally incompetent to contract, yet his illness had materially weakened his mental powers and impaired his power of self-protection. In such cases, especially when coupled with inadequacy of consideration, equity will give relief, even though neither the mental impairment nor the inadequacy of consideration, standing alone, would suffice. Courts are particularly willing to refuse specific performance against a defendant so afflicted. *Blackwilder* v. *Loveless*, 21 Ala. 371. But it is also well settled that, in cases of sufficient hardship, affirmative relief by way of cancellation will be given. *Mann* v. *Butterly*, 21 Vt. 326; *Maddox* v. *Simmons*, 31 Ga. 512. The decision in the principal case is warranted on this ground. The other ground suggested by the court, namely, the defendant's semi-confidential position with respect to the plaintiff, presents more difficulty. The case is somewhat analogous to those cases in which the directors of corporations have purchased shares from non-official shareholders, either concealing their identity as directors or withholding information material to the value of the shares. The earlier cases refused to recognize the "duty to disclose" under such circumstances. In 1847 Chief Justice Shaw said, "The directors are not the bailees, agents, factors, or trustees of the individual stockholders." *Smith* v. *Hurd*, 12 Met. (Mass.) 371. But in 1904, in *Strong* v. *Repide*, 213 U. S. 419, the Supreme Court, recognizing that the earlier rule opened the door to most inequitable impositions, decided